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12 **UNITED STATES BANKRUPTCY COURT**  
13 **DISTRICT OF NEVADA**

14 In re:

15 USA COMMERCIAL MORTGAGE  
16 COMPANY,

17 Debtor.

18 Case No. BK-S-06-10725-LBR

19 CHAPTER 11

20 **SECOND OMNIBUS OBJECTION  
21 OF USACM TRUST TO PROOFS OF  
22 CLAIM BASED IN WHOLE OR IN  
23 PART UPON INVESTMENT IN  
24 THE FIESTA MURRIETA LOAN**

25 **Date of Hearing: July 26, 2011**  
26 **Time of Hearing: 1:30 p.m.**  
27 **Estimated Time for hearing: 10 min.**

28 The USACM Liquidating Trust (the “USACM Trust”) moves this Court, pursuant  
29 to § 502 of title 11 of the United States Bankruptcy Code (the “Bankruptcy Code”) and  
30 Rule 3007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for an  
31 order disallowing in whole or in part the Proofs of Claim listed in **Exhibit A**. These claims  
32 were filed by investors (“Direct Lenders”) against USA Commercial Mortgage Company  
33 (“USACM”) based upon an investment in a loan to Fiesta Development, Inc. (the  
34 “Borrower”). This loan was sometimes referred to as the “Fiesta Murrieta Loan” and that  
35 is how the USACM Trust will refer to it here. This Objection is supported by the Court’s  
36 record and the Declarations of Geoffrey L. Berman and Edward M. Burr in Support of

1       Omnibus Objections to Proofs of Claim Based Upon the Investment in the Fiesta Murrieta  
2       Loan. (the “Berman Decl.” and “Burr Decl.”).

3           THIS OBJECTION DOES NOT RELATE TO AND WILL NOT IMPACT THE  
4           DIRECT LENDERS’ RIGHTS TO REPAYMENT ON THE FIESTA MURRIETA  
5           LOAN OR TO SHARE IN ANY PROCEEDS GENERATED FROM THE SALE OF  
6           THE REAL PROPERTY SECURING THE FIESTA MURRIETA LOAN.

7           **MEMORANDUM OF POINTS AND AUTHORITIES**

8           **I. BACKGROUND FACTS**

9           **a. The USACM Bankruptcy**

10      On April 13, 2006 (“Petition Date”), USACM filed a voluntary petition for relief  
11     under chapter 11 of the Bankruptcy Code. Debtor continued to operate its business as  
12     debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.  
13     Debtor’s post-petition management of the Debtor was under the direction of Thomas J.  
14     Allison of Mesirov Financial Interim Management, LLC, who served as the Chief  
15     Restructuring Officer.

16      USACM was a Nevada corporation that, prior to the Petition Date, was in the  
17     business of underwriting, originating, brokering, funding and servicing commercial loans  
18     primarily secured by real estate, both on behalf of investors and for its own account. That  
19     business included the solicitation of investors to purchase fractional interest in loans that  
20     USACM originated and then serviced. These investors are referred to as “Direct Lenders”  
21     in USACM’s bankruptcy case and in this Objection.

22      On January 8, 2007, this Court entered its Order Confirming the “Debtors’ Third  
23     Amended Joint Chapter 11 Plan of Reorganization” as Modified Herein [Docket No.  
24     2376]. As part of the Plan, and pursuant to an Asset Purchase Agreement filed with this  
25     Court, USACM sold the servicing rights to most of the loans it serviced to Compass

1 Partners, LLC and Compass Financial Partners, LLC (“Compass”), including the Fiesta  
2 Murrieta Loan. The sale to Compass closed on February 16, 2007.

3 The USACM Trust exists as of the Effective Date of the Plan, which was March 12,  
4 2007. Geoffrey L. Berman is the Trustee. Under the Plan, the USACM Trust is the  
5 successor to USACM with respect to standing to seek allowance and disallowance of  
6 Claims under 11 U.S.C. § 502(a).

7 Upon information derived from filings in the United States District Court, District  
8 of Nevada, *3685 San Fernando Lenders Company, LLC, et al v. Compass USA SPE, LLC,*  
9 *et al*, No. 2:07-cv-00892-RCJ-GWF action, the Trust believes that “Silar Advisors, LP  
10 (“Silar”) financed Compass’ acquisition of the Purchased Assets, including the loan  
11 service agreements in the USACM bankruptcy case and took a secured interest in those  
12 Purchased Assets by executing a Master Repurchase Agreement (“Repurchase  
13 Agreement”) with Compass, and by filing a UCC-1 financing statement with the State of  
14 Delaware.” *Id.* Docket 1250 at 13-14 (citations to declarations omitted).

15 Further, from filings in the same action, the Trust believes that “Effective as of  
16 September 26, 2007, Silar foreclosed on Compass through Asset Resolution LLC (“Asset  
17 Resolution”) and took ownership of the Purchased Assets. ... Silar created Asset  
18 Resolution as a ‘single purpose entity,’ conveyed all of its interests in the Repurchase  
19 Agreement to Asset Resolution, and Asset Resolution properly foreclosed on the assets of  
20 Compass, including the Purchased Assets.” (Citations omitted.) Asset Resolution LLC is  
21 now a debtor in a chapter 7 bankruptcy case pending in Nevada, case no. BK-S-09-32824-  
22 RCJ, along with certain affiliates.<sup>1</sup> William A. Leonard, Jr. was appointed trustee in the  
23 Asset Resolution case. By Order entered on July 19, 2010 by the Hon. Robert C. Jones in

24  
25 <sup>1</sup> 10 90 SPE LLC, Fiesta Stoneridge LLC, CFP Gramercy SPE LLC, Bundy 2.5 Million SPE LLC, CFP  
26 Cornman Toltec SPE LLC, Bundy Five Million LLC, Fox Hills SPE LLC, HFAH Monaco SPE LLC,  
Huntsville SPE LLC, Lake Helen Partners SPE LLC, Ocean Atlantic SPE LLC, CFP, Gess SPE LLC, CFP  
Fiesta Murrieta SPE LLC, and Shamrock SPE LLC.

1 the Asset Resolution Case, the servicing rights for 19 loans were transferred to Cross,  
2 FLS. The Fiesta Murrieta Loan, was among the loans whose servicing rights were  
3 transferred to Cross, FLS.

4 The Trust has attempted to monitor loan collections through monitoring the district  
5 court litigation and the ARC bankruptcy case, but has received limited information  
6 concerning servicing and resolution of direct loans by Compass/Silar/Asset Resolution or  
7 their successors, including the trustee in bankruptcy for Asset Resolution. The Trust has  
8 also been in contract with Cross FLC about certain loans that it is servicing, including the  
9 Fiesta Murrieta Loan. The following is the extent of the USACM Trust's information on  
10 the current servicing and status of the Fiesta Murrieta Loan.

11 **b. The Fiesta Murrieta Loan**

12 USACM circulated an Offer Sheet to prospective Direct Lenders soliciting funding  
13 for an acquisition and development loan to a borrower identified as "Fiesta Development."  
14 A copy of the Offer Sheet is attached hereto as **Exhibit B** and incorporated by this  
15 reference. (Berman Decl., ¶ 4.) The total loan amount proposed was \$6,500,000. The  
16 Offer Sheet described the investment as a "First Trust Deed Investment" and noted that the  
17 investment would be secured by a first deed of trust on "approximately 26 acres for  
18 development into approximately 56 single family residential lots" in Southwest Riverside  
19 County near the intersection of Interstate 15 and 215.<sup>2</sup> Pursuant to the Loan Agreement,  
20 the loan was intended for Borrower to acquire the subject real estate.

21 On April 14, 2005, Borrower made and delivered to various lenders, including the  
22 Direct Lenders identified in **Exhibit A**, a "Promissory Note" (the "Note") and a Loan  
23 Agreement. (Berman Decl., ¶ 5.) The Note and Loan Agreement provided for a loan of  
24 \$6,500,000. The Note was secured by a "Deed of Trust, Assignment of Rents, Security

25 \_\_\_\_\_  
26 <sup>2</sup> There does not appear to be an appraisal to support this loan. Loan to value was represented to be 50%  
based on prices of "similarly situated finished lots". This property pledged as collateral does not appear to  
have been finished, however.

1 Agreement and Fixture Filing" from the Borrower in favor of the Direct Lenders that was  
2 recorded in the official records of Riverside County, California on April 15, 2005 at  
3 Instrument Number 2005-0298213. The Note was also supported by an April 14, 2005  
4 Guaranty signed by Richard Ashby and Larry Redman, who, pursuant to the Offer Sheet,  
5 "indicate a combined net worth in excess of \$20 million." (Berman Decl., ¶ 6.)

6 The USACM "Loan Summary" dated July 31, 2006 and filed in this case shows  
7 that Borrower was "Performing" on the Note as of July 31, 2006 and the "Loan Summary"  
8 dated February 28, 2007 shows that Borrower was "Performing" on the Note as of  
9 February 28, 2007. (Berman Decl., ¶ 7.) During this bankruptcy case through the transfer  
10 of servicing to Compass, USACM treated the Direct Lenders with respect to any interim  
11 payments by the borrower in accordance with this Court's orders.

12 Counsel for the Trustee spoke with Cross FLS regarding the current status of the  
13 Margarita Annex Loan. Upon information and belief, the loan has stopped performing,  
14 and Cross FLS is attempting to find a buyer for the Note. The Borrower continues to own  
15 the collateral.

16 **c. The Fiesta Murrieta Claims**

17 **Exhibit A**, attached, lists Proofs of Claim filed by Direct Lenders that appear to be  
18 based in whole in part upon an investment in the Fiesta Murrieta Loan. (Burr Decl. ¶ 7.)  
19 **Exhibit A** identifies the Proof of Claim number, the claimant, the claimant's address, the  
20 total amount of the claim and the total amount of the claim that appears to be related to an  
21 investment in the Fiesta Murrieta Loan based upon the information provided by the  
22 claimant. (Burr Declaration ¶ 7.) The claims listed in **Exhibit A** are referred to  
23 hereafter as the "Fiesta Murrieta Claims." As required by Nevada LR 3007, a copy of the  
24 first page of the proof of claim for each of the claims referenced in **Exhibit A** are attached  
25 as **Exhibit C**.

1           **II. JURISDICTION**

2           The Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 1334 and  
3           157. Venue is appropriate under 28 U.S.C. §§ 1408 and 1409. This matter is a core  
4           proceeding under 28 U.S.C. § 502 and Bankruptcy Rule 3007.

5           The statutory predicates for the relief requested herein are 11 U.S.C. § 502 and  
6           Bankruptcy Rule 3007.

7           **III. APPLICABLE AUTHORITY**

8           Under the Bankruptcy Code, any Claim for which a proof of claim has been filed  
9           will be allowed unless a party in interest objects. If a party in interest objects to the proof  
10          of claim, the Court, after notice and hearing, shall determine the amount of the Claim and  
11          shall allow the Claim except to the extent that the Claim is “unenforceable against the  
12          debtor . . . under any . . . applicable law for a reason other than because such claim is  
13          contingent or unmatured.” 11 U.S.C. § 502(b). A properly filed proof of claim is  
14          presumed valid under Bankruptcy Rule 3001(f). However, once an objection to the proof  
15          of claim controverts the presumption, the creditor ultimately bears the burden of  
16          persuasion as to the validity and amount of the claim. *See Ashford v. Consolidated*  
17          *Pioneer Mortg. (In re Consolidated Pioneer Mortg.)*, 178 B.R. 222, 226 (9th Cir. B.A.P.  
18          1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996).

19           **IV. THE OBJECTION**

20          The Fiesta Murrieta Loan appears to have been a legitimate, arms-length  
21          transaction. In addition, the Direct Lenders took a known risk by investing in a  
22          promissory note secured by a lien on real property.

23          USACM is not liable for the Borrower's default or any decrease in the value of the  
24          collateral.

25          The Direct Lenders fail to state a claim because USACM does not appear to have  
26          breached the loan servicing agreements with respect to collection of the Fiesta Murrieta

1      Loan. USACM was under no duty to foreclose on the collateral securing the Fiesta  
2      Murrieta Loan or take any other action.

3            This objection will not affect the Direct Lenders' right to be repaid on the Fiesta  
4      Murrieta Loan by the Borrower or to recover from the sale of any collateral that secured  
5      the Fiesta Murrieta Loan.

6      **V. CONCLUSION**

7            The USACM Trust respectfully requests that the Court disallow the claims against  
8      USACM listed in Exhibit A in whole or in part to the extent the claims are based upon an  
9      investment in the Fiesta Murrieta Loan. This objection concerns only the Fiesta Murrieta  
10     Loan and not any other claims of any of the Direct Lenders. The USACM Trust also  
11     requests such other and further relief as is just and proper.

12     Dated: June 16, 2011.

LEWIS AND ROCA LLP

13     By s/John Hinderaker (AZ 18024)  
14       Robert M. Charles, Jr., NV 6593  
15       John Hinderaker, AZ 18024 (*pro hac vice*)  
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20       *Attorneys for the USACM Liquidating Trust*

21     Copy of the foregoing and pertinent  
22     portion of Exhibits mailed by first  
23     class postage prepaid U.S. Mail on  
24     June 16, 2011 to all parties listed on  
25     Exhibit A attached.

26     LEWIS AND ROCA LLP

27     s/ Matt Burns  
28     Matt Burns